

Filed for intro on 01/22/98
HOUSE BILL 2455 By
Hargrove

SENATE BILL 3003
By Crutchfield

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter
86, relative to emergency communications districts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Findings and statement of Legislative Purpose

(A) The general assembly finds that the Emergency Communications District Law ("the law") has been successfully embraced by the vast majority of Tennessee counties, most of which have initiated basic or enhanced 911 service (E-911) and are developing or maintaining this lifesaving service in furtherance of the purposes stated in the law.

(B) The general assembly finds that the effectiveness of E-911 service depends on the ability of emergency communicators to notify emergency service providers of the need to respond to a request for emergency assistance, and such effectiveness is directly affected by the nature and coverage of the radio communications network available within a community, the quality of which is often limited by the availability of financial resources in the community.

(C) The general assembly finds that the increasing use of wireless telecommunications devices ("telephones"), including, but not limited to, cellular telephones, has significantly impacted public safety answering points (PSAP), or dispatch centers, with each call creating unique demands upon communicators/dispatchers.

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(D) The general assembly finds that the rapid technological advancement in the area of telecommunications has provided the public with wireless and other mobile telecommunications services. The general assembly finds that recent rulings of the Federal Communications Commission (FCC) have mandated E-911 service be provided to wireless and other mobile telecommunications services, but have not provided a funding mechanism.

(E) The general assembly finds and declares that the original and continuing intent of the law was to extend the lifesaving E-911 service to all telephone users, regardless of whether access is gained through the traditional land-line or the emerging wireless technology, and to require that all who have access to the service fairly contribute to the cost.

(F) The general assembly finds that it is in the public interest to provide for the creation of a committee whose primary purpose will be to facilitate access to the E-911 for wireless users, and to do so in a manner which does not interfere in any way with the operation or management of emergency communications districts.

SECTION 2. Tennessee Code Annotated, Title 7, Chapter 86, is hereby amended by adding the following sections as a new and appropriately designated part:

SECTION 3. Creation and Membership of WIC

(A) There is hereby created the Tennessee Wireless Implementation Committee ("WIC") for the purpose of assisting the boards of directors ("the Board" or "Boards") of emergency communications districts ("the District" or "Districts") in the provision of the lifesaving 911 system to wireless telephone customers, which includes cellular and other technologies as may have access to the 9-1-1 system now or hereafter.

(B) The WIC shall be composed of nine (9) members to be appointed by the governor, as follows:

(1) The governor shall appoint one (1) person from each of the Tennessee congressional districts. If the number of districts shall change in the future, the membership of the WIC shall be increased or reduced to correspond thereto.

(2) The governor shall appoint from nominees provided by the chief elected official (CEO) of each District desiring to make a nomination. The CEO shall be the county executive for county districts. The CEO shall be the mayor for municipal districts.

(a) Any CEO may submit a single nominee upon the recommendation of the Board of the District.

(b) Any person recommended by a Board must be either a member of the Board or designee of the Board.

(3) In appointing members, the governor shall seek appropriate balance to provide fair representation of districts from the higher, medium, and lower-populated areas of the state.

(4) If, for any reason, the governor shall fail to receive a nomination from any CEO within a congressional district, the governor shall then appoint any otherwise qualified person who may be recommended by any board of any district which is within that congressional district.

(5) If, for any reason, the governor shall have received a nomination or nomination(s) from within a congressional district and shall fail to appoint a member within ninety (90) days, then the remaining members of the WIC may, by majority vote, select any person nominated from within the congressional district.

(6) Upon appointment, a member shall be immediately entitled to vote and exercise all rights of a WIC member.

(C) Members of the WIC shall be appointed for terms of three (3) years, staggered as follows:

(1) The appointees from congressional districts 1, 4, and 7 shall each serve initial terms of one (1) year.

(2) The appointees from congressional districts 2, 5, and 8 shall each serve initial terms of two (2) years.

(3) The appointees from congressional districts 3, 6, and 9 shall each serve initial terms of three (3) years.

(D) The terms of WIC members shall commence July 1, 1998.

(E) Members of the WIC may continue to serve until a qualified successor is appointed as provided herein.

(F) WIC vacancies for any reason, including resignation, incapacity, or death, shall be reported to the governor and the boards of the districts within the affected congressional district. Persons appointed to fill a vacancy shall serve the unexpired portion of the term for the person whose position they are replacing, and may continue to serve until a successor is appointed.

SECTION 4. WIC Meetings and Procedure

(A) Meetings of the WIC shall be open and publicly advertised in a manner adequate to provide reasonable advance notice to all districts.

(B) The WIC shall keep minutes of all meetings and a record of members present. All records shall be made available to the public upon request and upon the payment of reasonable costs.

(C) Any WIC member may participate in meetings by telephone or other means which allow the participant to be authenticated as to identity, to hear and to be heard.

(D) Meetings of the WIC shall be held at least quarterly.

(1) The WIC shall publish and make available to all districts on or before December 1 of each year, an annual meeting schedule for the following calendar year.

(2) All WIC members shall be given no less than ten (10) days advance written (which includes facsimile or electronic mail) prior notice of any meeting not on the annual schedule.

(3) Notices of non-scheduled meetings shall designate the date, time and place of the meeting. The purpose(s) of such meeting must be included in the notice.

(E) The WIC may adopt its own rules of order, from time to time, so long as same are fair to all members and designed to meet the minimum requirements of due process. In the absence of the WIC's own rules, the most recent published edition of Roberts' Rules of Order shall apply.

(F) All decisions of the WIC shall be made by a majority of the full membership of the WIC.

(G) The WIC shall elect a chairman, vice-chairman, secretary, and such other officers as it may deem necessary, at its first meeting of each calendar year.

(1) The chairman shall preside at all meetings.

(2) The vice-chairman shall preside in the chairman's absence.

(3) The secretary shall be responsible for the certification and maintaining of all minutes and other records of the WIC.

(4) The WIC may vest these persons with such other duties and powers as the WIC may deem appropriate, from time to time.

SECTION 5. WIC Powers, Authority, and Prohibitions

(A) The WIC shall have the power and authority to do all things reasonable and necessary to accomplish the purpose of the WIC, which is, among others, to facilitate

the provision of universal access to the 9-1-1 system to all wireless telephone customers in Tennessee, upon such terms and conditions as are in the best interest of the citizens of all districts, fair and equitable to all districts, and consistent with the purposes of the Emergency Communications District Law.

(B) The WIC shall have no authority to:

(1) review any decision of any district, or make any recommendation to any person or public agency relating thereto.

(2) review the rates or service of any district, or make any recommendation to any person or public agency relating thereto.

(3) replace any member of any board, or to make any recommendation to any person or public agency relating thereto.

(4) recommend the elimination of any district or consolidation of any district into any other district.

(5) do anything unless authorized by this act.

(C) Any WIC member(s) who violates the prohibitions of this section or fails to adhere to the requirements of any other part of this act shall be removed from the WIC and promptly replaced in accordance with the provisions herein relating to vacancies.

(D) The WIC may promulgate rules and regulations for the conduct of its affairs.

(E) The WIC may appoint such advisors, experts, agents, and employees as it deems necessary, fix the terms of compensation or salary, benefits, and duties as it deems reasonable and necessary.

(F) The WIC may make and enter into contracts; provided, however, no contract, lease, license, or other agreement may be for a term longer than five (5) years, unless approved by the comptroller of the treasury ("the comptroller").

(G) The WIC shall conduct an annual audit in the same manner as required by law of Districts. A copy of the audit shall be filed with the comptroller of the treasury.

(H) The WIC may accept gifts, grants, or other moneys, and receive appropriations which may be made by law.

(I) The WIC may give advisory assistance to any district which may request such assistance.

(J) The WIC shall inform districts of such technical operating standards as may be required by state or federal agencies.

(K) The WIC may inform districts of state and federal requirements relating to the use of revenue derived from the 9-1-1 emergency telephone service charge (ETSC), or other sources.

(L) The WIC may inform districts of applicable financial and accounting standards as may be lawfully promulgated, from time to time, by state and federal authorities.

(M) Any decision or action of the WIC may be appealed as provided by the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

SECTION 6. Plan for Wireless E-911 Service

The WIC shall develop and implement a plan for providing wireless enhanced 9-1-1 (E-911) service to all Districts. The plan shall include a schedule for the acquisition of necessary equipment, installation thereof, operation and maintenance of the service, among other things, as the WIC, in its sole discretion, may consider reasonable and necessary.

SECTION 7. Annual Budget and Fiscal Year

(A) The WIC shall adopt a budget each year on or before July 1, which date shall be the first day of the WIC's fiscal year.

(B) The WIC shall send a copy of the proposed budget to each district no less than thirty (30) days before final approval, which notice shall include the time, date, and location of the WIC meeting at which the budget will be considered for final approval. districts may make recommendations to the WIC concerning the budget.

(C) The WIC budget shall include at least the same information as that required of districts by the law (T.C.A. Section 7-86-120).

SECTION 8. Compensation of WIC Members

(A) Members of the WIC shall not be entitled to a salary for their services, but shall be reimbursed for all reasonable and necessary expenses incurred for travel to and from WIC meetings or while on official business of the WIC.

(B) Reimbursement or advance payment of anticipated travel expenses and other reasonable and necessary expenses shall be made in accordance with the state's comprehensive travel regulations.

SECTION 9. Wireless Service Charge

(A) The WIC shall be funded through a wireless service charge ("the WSC") on all users of any communications device which has, or may have access to the E-911 system, including, but not limited to:

- (1) all broadband personal communications services,
- (2) cellular radio telephone services,
- (3) geographic area specialized mobile radio services in the 800 megahertz (MHz) and 900 MHz bands that offer real-time, two-way voice service that is interconnected with the public switched network, and
- (4) incumbent wide area SMR service.

(B) The WSC shall not be levied on the trunks or service lines used to supply such service to wireless systems.

(C) The WSC shall be established by the WIC in a monthly amount not to exceed the maximum monthly charge allowable for a residential wire line.

- (1) The maximum authorized WSC shall be revised annually by the amount of increase or decrease in the consumer price index ("CPI") published by the United States Government for the preceding calendar year.

(2) The first adjustment shall be made March 1, 1999, and annually thereafter.

(D) The WSC shall be collected monthly by each "wireless service supplier" (WSS) doing business in Tennessee and shall be remitted to the WIC no later than thirty (30) days after the last business day of each month.

(1) The WSS shall be authorized to demand payment from any service user or customer who fails to pay any proper WSC.

(2) The WSS may take such legal action, if necessary, to collect the same, or may, in lieu thereof and without any liability whatsoever to such user or customer for any losses or damages which result therefrom, terminate all service to such user or customer.

(a) Any such terminated user or customer shall have the right to resume service from the WSS as long as the user or customer is otherwise in compliance with the regulation of the WSS, upon payment of all past due service charges and any other costs or expenses, including reasonable interest, or normal costs or charges of the WSS for the resumption of service, incurred by the WSS and the WIC as a result of nonpayment.

(b) The liability of any wireless user or customer for the payment of the WSC shall be collectible by any WSS with whom the user or customer has service, upon request of the WIC.

(c) The WSS shall provide the WIC, upon request, a listing of any users or customers who have been terminated and the amount of the WSC which remains unpaid.

(E) The WSS shall, no later than March 1 of each year, provide the WIC an accounting of the amounts of the WSC billed and collected during the previous year, and the disposition of such amounts.

(F) The WSS shall be entitled to retain as an administrative fee an amount up to and including three percent (3%) of the monthly WSC collected from its customers, if the WSS is in full compliance with all the requirements of this act, specifically including, without limit, the requirement to provide information to the WIC concerning the residence of each customer.

SECTION 10. Retainage and Distribution of WSC

(A) The WIC shall be entitled to retain an amount of all WSC collections during the Implementation Phase which is sufficient to meet its operating and capital requirements, including a reasonable operating reserve, and to accomplish its purposes as mandated by this act, (specifically including the payment of all costs associated with acquiring, installing, implementing, operating, and maintaining the wireless E-911 service), provided that such retained amount not exceed seventy-five percent (75%) of all WSC collections.

(1) The Implementation Phase shall be that period during which the WIC is to accomplish the purpose of this act.

(2) The Implementation Phase shall end at such time as the WIC declares and finds that the purpose of the act has been accomplished, but in no event may this date be later than December 31, 2001 unless extended as provided herein.

(a) The Implementation Phase may be continued only:

(i) upon a written finding by the WIC, published and distributed to all districts and the comptroller, on or before March 1, 2001, that an extension is required in order to accomplish the

purpose of the act, the duration of which extension shall be specified by the WIC, and

(ii) also by an affirmative vote of a majority of the boards of all districts, which majority must also include a majority of the total population of all districts.

(b) The vote by the Boards shall be by a ballot prepared, distributed, and certified as to result by the comptroller, with all costs of the referendum to be paid by the WIC.

(i) Each district shall be entitled to one (1) vote.

(ii) Each board of each district shall be entitled to vote by resolution of the board certified to the comptroller.

(iii) The comptroller shall initiate the referendum within thirty (30) days of receiving the request and finding of the WIC, and shall allow sixty (60) days for districts to vote.

(iv) The comptroller shall certify the result of the referendum within thirty (30) days of the close of the voting period.

(B) The balance of all collections of the WSC shall be distributed to the districts, within thirty (30) days of receipt, according to a customer or user-based formula which shall be annually revised by the WIC. This formula shall be determined by calculating the number of wireless users resident in each district and distributing a pro-rata share of the total WSC collections to each district based on the percentage of the total customers or users residing in each district.

(1) All wireless service suppliers ("WSS") shall provide the WIC a monthly report of the number of users or customers in each district.

(2) If the WIC finds that the failure to provide such information is not reasonable, the WIC may order the forfeiture of part or all of the administrative

fee authorized to be retained by the WSS until such time as the WSS complies with this requirement.

(C) Following the Implementation Phase, the formula shall be revised to provide that no less than ninety percent (90%) of all WSC collections shall be distributed to the districts.

(1) The balance may be used by the WIC to meet its operating and capital requirements.

(2) The balance, after meeting the requirements above, may, in the discretion of the WIC, be used to provide supplemental funding to financially-challenged Districts, based upon such fair and reasonable criteria as the WIC may establish, from time to time.

SECTION 11. Definitions

(A) "Wireless Service Supplier" (WSS) means any person, corporation, or entity providing broadband personal communications service, cellular radio telephone service, geographic area specialized mobile radio services in the 800 MHz and 900 MHz bands which offer real-time, two-way voice service that is interconnected with the public switched network, incumbent wide area SMR licensees, or any other cellular or wireless telecommunications service to any service user.

(B) "Wireless telephone service" is defined as any and all broadband personal communications service, cellular radio telephone service, geographic area specialized mobile radio services in the 800 MHz and 900 MHz bands which offer real-time, two-way voice service that is interconnected with the public switched network, incumbent wide area SMR licensees, or any other cellular or wireless telecommunications service.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.

